



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,480	12/03/2003	Stuart Calwell	1678-107	3988

6449 7590 05/04/2004

ROTHWELL, FIGG, ERNST & MANBECK, P.C.
1425 K STREET, N.W.
SUITE 800
WASHINGTON, DC 20005

EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT	PAPER NUMBER
----------	--------------

3724

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/725,480	Applicant(s) CALWELL, STUART	
	Examiner Boyer D. Ashley	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/3/03</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Priority

1. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification of in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

In this case, applicant should amend the first sentence to include the U.S. Patent number 6,681,665 for application number 10/140,247.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 8, 11 and 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There appears to be no positive antecedent basis "the olfactory sense" (claims 8 and 14-15) and "the strength" (claim 11).

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

Art Unit: 3724

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 6,681,665. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in the claim terminology used but encompass the same subject matter.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 6-8, and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Quinn, U.S. Patent 5,167,069.

Quinn discloses the same invention as claimed including the steps of: mounting a scent delivery package (64) on a shaving unit (16) such that said scent delivery package does not contact the skin of a user when being used (when shaving); using the shaving unit while shaving to deliver therapeutic doses of aroma to the user sufficient to stimulate to a positive effect in the user's brain. It should be noted that the term

Art Unit: 3724

"sufficient" does not set forth any positive limitation and only requires the prior art references to be capable of stimulating a positive effect in the user's brain. In this case, the Quinn is capable of delivering therapeutic doses of aroma to the user capable of having a positive effect on a user's brain because the package (64) includes soaps, lotions, ointments, or other similar liquids.

As to claims 6-7, the sponge of Quinn acts as a reservoir, which is mounted on the handle.

As to claim 8, the step of "providing aroma therapy ... package" is merely functional/intended use language that does not result in a manipulative difference as compared to the prior art. Moreover, the Quinn disclose the use of scented substances, which are capable of providing "aroma therapy".

As to claims 11-13, Quinn discloses the same invention as claimed as explained above and further comprising the step of "activating the scent delivery package to increase the strength of a scented fragrance emanating ...". It should be noted that the soap sponge of Quinn is activated by applying hot water to it. Soap is well known to increase in scent strength after hot water has been applied to it.

8. Claims 1, 6-8, 11, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Valliades et al., U.S. Patent 4,850,107

Valliades discloses the same invention as claimed including the steps of: mounting a scent delivery package (20) on a shaving unit such that said scent delivery package does not contact the skin of a user when being used (when shaving); using the shaving unit while shaving to deliver aroma therapy to the user. See column 3, lines 15-

Art Unit: 3724

20. It should be noted that the term "sufficient" does not set forth any positive limitation and only requires the prior art references to be capable of stimulating a positive effect in the user's brain. In this case, the Valliades is capable of delivering therapeutic doses of aroma to the user capable of having a positive effect on a user's brain because the package (20) includes scented fluids.

As to claims 6-7, the sponge area of Valliades acts as a reservoir, which is mounted on the handle.

As to claim 8, the step of "providing aroma therapy ... package" is merely functional/intended use language that does not result in a manipulative difference as compared to the prior art. Moreover, the Valliades disclose the use of scented substances, which are capable of providing "aroma therapy".

As to claims 11, Valliades discloses the same invention as claimed as explained above and further comprising the step of "activating the scent delivery package to increase the strength of a scented fragrance emanating ...". It should be noted that the sponge of Valliades is activated by applying water to it.

9. Claims 1, 6-9, 11, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Patrakis, U.S. Patent 5,121,541.

Patrakis discloses the same invention as claimed including the steps of: mounting a scent delivery package (16) on a shaving unit such that said scent delivery package does not contact the skin of a user when being used (when shaving); using the shaving unit while shaving to deliver aroma therapy to the user. See the abstract and column 1, lines 50-65.

As to claim 6, Patrakis discloses the step of using reservoir for the scent delivery package.

As to claim 11, Patrakis discloses the same invention as claimed as explained above and further comprising the step of "activating the scent delivery package to increase the strength of a scented fragrance emanating ...". It should be noted that the scent delivery package is "activated" by the ultrasonic vibrator.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2-5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quinn or Valliades.

Quinn and Valliades both disclose the invention substantially as claimed except for steps of either: using a water soluble chemical encapsulated fragrance or using a gelatin encapsulated micro-spherical fragrance particles, gelatin Arabic encapsulated micro-spherical fragrance particles, using non-porous micro spherical carrier particles, or gum Arabic encapsulated micro-spherical fragrance particles. However, the examiner takes official notice that these methods for encapsulating substances to be dispensed in a controlled method environment are old and well known in the razor art for the purpose of facilitating a shaving operation. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to

Art Unit: 3724

replace the scent delivery packages of either Quinn or Valliades in order to control the amount and speed of dispensing while shaving.


Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 703-308-1845. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Boyer D. Ashley
Primary Examiner
Art Unit 3724

BDA
April 29, 2004